

## **MINUTES OF THE CITY COUNCIL**

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, MARCH 9, 2004**

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room 600, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Gregory, LeZotte, Reed, Yeager; Gonzales.

Absent: Council Members - Dando, Williams. (Excused)

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; subsection (a) to discuss existing litigation in the case(s) of: (1) In Re: Gattey; (2) In Re: Francis; (3) Chegwin Construction, Inc. v. City of San José; (4) Bui, et al. v. City of San José, et al.; (5) City of San José v. American G.I. Forum, et al.; and (B) confer with Legal Counsel pursuant to Government Code Section 54956.9, subsection (b) to discuss significant exposure to litigation in one (1) matter; (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Municipal Employees Federation; (4) Confidential Employees Organization; (5) City Association of Management Personnel; (6) Association of Maintenance Supervisory Personnel; (7) Operating Engineers, Local 3; (8) International Brotherhood of Electrical Workers; (9) Association of Building and Mechanical and Electrical Inspectors.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:45 a.m. and reconvened at 1:36 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Gregory, LeZotte, Reed, Yeager; Gonzales.

Absent: Council Members - Dando, Williams. (Excused)

### **INVOCATION (DISTRICT 3)**

Rudy Medina commemorated the life, work, and legacy of César Chavez, reciting from the "Prayer of the Farm Workers' Struggle".

### **PLEDGE OF ALLEGIANCE**

Mayor Gonzales led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Council Member Chavez, seconded by Council Member Cortese, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved. Vote: 9-0-2-0. Absent: Dando, Williams.

## CONSENT CALENDAR

Upon motion by Council Member Chavez, seconded by Council Member Reed and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 9-0-2-0. Absent: Dando, Williams.

### **2.3 Report on a Request for Proposal (RFP) and adoption of a resolution authorizing the Director of General Services to:**

- (a) Execute an agreement with Mobile Radio Engineers LLC, d.b.a. Day Wireless Systems for the purchase of a fire station alert system, for a total cost of \$129,024.44, including delivery, installation, training, tax, and one year of maintenance and support; and**
- (b) Execute change orders in an amount not to exceed a 5% contingency to cover unanticipated changes in the system design and/or installation. CEQA: Not a project.**

**(General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated February 18, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71978, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute an Agreement with Mobile Radio Engineers, LLC, Doing Business as Day Wireless Systems for the Purchase of a Fire Station Alert System", was adopted. Vote: 9-0-2-0. Absent: Dando, Williams.

### **2.4 Adoption of a resolution authorizing the Director of General Services to execute all documents necessary for the donation of one Chevrolet Suburban Utility Vehicle with a total estimated value of \$5,100 to the Santa Clara County Black Fire Fighters Association. CEQA: Not a Project. (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated February 18, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71979, entitled: "A Resolution of the Council of the City of San José Approving the Donation of One Surplus Chevrolet Suburban Utility Vehicle to the Santa Clara County Black Fire Fighters Associations", was adopted. Vote: 9-0-2-0. Absent: Dando, Williams.

- 2.5 Adoption of a resolution authorizing the City Manager to submit a grant application, in an amount up to \$370,000, for Coyote Creek Trail, and negotiate and execute all necessary documents for Proposition 40 funds: The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002. CEQA: Not a Project. Council District 7. SNI: Spartan/Keyes. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated February 18, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71980, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Submit a Grant Application in an Amount Not To Exceed \$370,000 for the Coyote Creek Trail Development, and Negotiate and Execute All Necessary Documents for Proposition 40 Funds: The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002", was adopted. Vote: 9-0-2-0. Absent: Dando, Williams.

- 2.6 Adoption of a resolution to:**

- (a) **Initiate proceedings to consider the Nevills-Campisi House (84 S. Sixth Street) a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature, HL03-149.**
- (b) **Set a public hearing on April 27, 2004 at 1:30 p.m.**
- (c) **Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, report and recommendation.**

**CEQA: Exempt, File No. HL03-149. Council District 3. SNI: 13<sup>th</sup> Street. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Secretary of Historic Landmarks Commission Stephen Haase, dated February 18, 2004, recommending adoption of said resolution. (2) Affidavit of Routing executed on March 15, 2004, and distributed by the City Clerk.

Discussion/Action: Resolution No. 71981, entitled: "A Resolution of the Council of the City of San José Initiating Proceeding on its Own Motion, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, to Designate the Nevills-Campisi House, Presently Located at 84 S. Sixth Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature", was adopted. Vote: 9-0-2-0. Absent: Dando, Williams.

- 2.7 Approval of 14 purchase agreements for real property along North White Road between McKee and Mabury Roads, together with immediate rights of entry on each of the 13 properties, for a total amount of \$383,550, and authorization for the Director of Public Works to execute any additional documents necessary to complete these transactions. CEQA: Negative Declaration, PP03-11-355. Council District 5. (Public Works)**

## 2.7 (Cont'd.)

Documents Filed: Replacement memorandum from Director of Public Works Katy Allen, dated March 2, 2004, recommending approval of 14 purchase agreements for real property along North White Road between McKee and Mabury Roads, together with immediate rights of entry on each of the 13 properties, authorization for the Director of Public Works to execute any additional documents necessary to complete these transactions, and including additional amounts to be paid to some owners for rights of entry.

Discussion/Action: The 14 purchase agreements for real property along North White Road between McKee and Mabury Roads, together with immediate rights of entry on each of the 13 properties, including additional amounts to be paid to some owners for rights of entry, for total amount of \$406,750, was approved, and the Director of Public Works was authorized to execute any additional documents necessary to complete these transactions. Vote: 9-0-2-0. Absent: Dando, Williams.

- 2.8 Adoption of a resolution authorizing the Director of Public Works to approve and execute an agreement with the State of California for the purchase of an easement over a portion of land located at the River Oaks Reach of the Coyote Creek Trail between State Route 237 and the Montague Expressway in the amount of \$22,000, and to execute any additional documents necessary to complete the transaction. CEQA: Exempt, PP03-07-230. Council District 4. (Public Works)**

Documents Filed: None.

Discussion/Action: Item 2.8 was deferred to March 23, 2004.

- 2.9 Adoption of a resolution summarily vacating a portion of Palmilla Drive and the Public Service Easement (PSE) on both sides of Palmilla Drive between Rio Robles East and Descanso Drive. CEQA: Resolution No. 68667 and Addenda hereto, PDC03-043. Council District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 18, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71982, entitled: "A Resolution of the Council of the City of San José Summarily Vacating a Portion of Palmilla Drive and the Public Service Easement on Both Sides of Palmilla Drive Between Rio Robles East and Descanso Drive", was adopted. Vote: 9-0-2-0. Absent: Dando, Williams.

- 2.10 (a) Acceptance of the Office of the City Auditor's monthly *Report of Activities and Findings through February 15, 2004.***  
**(b) Acceptance of the findings reports from Kafoury, Armstrong, & Company, LLP for the quarter ending September 30, 2003, relating to the Bay 101 Conditional Approval of Stock Transfer.**  
**(City Auditor)**  
**(Rules Committee referral 3/3/04)**

## 2.10 (Cont'd.)

Documents Filed: (1) Report of the City Auditor, Report of Activities and Findings Through February 15, 2004. (2) Memorandum from City Auditor Gerald Silva, dated February 25, 2004, transmitting the findings reports from Kafoury, Armstrong & Company, LLP for the quarter ending September 30, 2004, relating to the Bay 101 Conditional Approval of Stock Transfer.

Discussion/Action: The Report of the Activities and Findings Through February 15, 2004, from the Office of the City Auditor, and the Findings Reports from Kafoury, Armstrong & Company, LLP for the quarter ending September 30, 2004, relating to the Bay 101 Conditional Approval of Stock Transfer, were approved. Vote: 9-0-2-0. Absent: Dando, Williams.

- 2.11 (a) **Adoption of a resolution authorizing the City Attorney to negotiate and execute a continuation agreement with Bingham McCutchen LLP (formerly McCutchen, Doyle, Brown & Enersen, LLP) for litigation support services related to the development of the North Coyote Valley Industrial Campus Area, extending the total amount not to exceed \$652,272.46, with all funds paid by the developer.**
- (b) **Adoption of the following appropriation ordinance and funding sources resolution amendments in the Construction Excise Tax Fund:**
- (1) **Increase the appropriation to the Department of Public Works for the Cisco: North Coyote Valley Improvements Project in the amount of \$152,273.**
- (2) **Increase the estimate for Earned Revenue by \$152,273.**

**CEQA: Not a Project. Council District 2.**

**(City Attorney's Office/City Manager's Office)**

**(Rules Committee referral 3/3/04)**

Documents Filed: Memorandum from City Attorney Richard Doyle, and Budget Director Larry Lisenbee, dated March 4, 2004, recommending adoption of said resolution and appropriation ordinance and funding sources resolution amendments.

Discussion/Action: Resolution No. 71983, entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Continuation Agreement with Bingham McCutchen LLP (Formerly McCutchen, Doyle, Brown & Enersen, LLP) to Extend the Term of the Agreement and to Increase Compensation by \$152,272.46"; and Ordinance No. 27083, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Construction Excise Tax Fund for the Cisco: North Coyote Valley Improvements Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 71984, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the Construction Excise Tax Fund", were adopted. Vote: 9-0-2-0. Absent: Dando, Williams.

- 2.12 Adoption of a resolution authorizing the City Manager to negotiate and execute a Memorandum of Understanding (MOU) setting forth the proposed form of lease agreement the City would propose to enter into with the Franklin-McKinley School District for a term of at least 20 years. CEQA: Exempt, PP03-12-370. Council District 7. SNI: Tully-Senter. (Parks, Recreation and Neighborhood Services) (Rules Committee referral 3/3/04)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated March 4, 2004, recommending adoption of said resolution

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, with both Mayor Gonzales and Council Member Gregory abstaining due to conflict of interest, with Mayor Gonzales being a member of the Board of Directors of the Franklin-McKinley School District, and Resolution No. 71985, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Memorandum of Understanding with the Franklin-McKinley School District for a Term of at Least 20 Years", was adopted. Vote: 7-0-2-2. Absent: Dando, Williams. Disqualified: Gregory; Gonzales.

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

**3.2 Report of the Rules Committee – February 25, 2004  
Vice Mayor Dando, Chair**

Documents Filed: The Rules Committee Report dated February 25, 2004.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
  - (1) Review March 9, 2004 Draft Agenda

The Committee recommended approval of the March 9, 2004 City Council agenda.

- (2) Add New Items to March 2, 2004 Amended Agenda

There were no changes made to the March 2, 2004 City Council agenda.

- (3) List of Reports Outstanding

There are no reports outstanding for the March 2, 2004 City Council meeting.

**3.2 Report of the Rules Committee – February 25, 2004 (Cont'd.)  
Vice Mayor Dando, Chair**

- (c) Legislative Update
  - (1) State
    - (a) Report on Proposed State Bills Pertaining to Megan's Law

This item was reported during the March 2, 2004 Council meeting.

- (2) Federal - There was no report.
- (d) Meeting Schedules. Attachment: Memorandum from Mayor Gonzales, dated February 24, 2004, recommending deferral of the Public Hearing, and approval of the Mayor's March Budget Message from March 16, 2004 to March 23, 2004.

The Committee recommended deferral of the Public Hearing and Approval of the Mayor's March Budget Message from March 16, 2004 to March 23, 2004.

- (e) The Public Record - There was no Public Record filed.
- (f) Appointment to Boards, Commissions and Committees - There were none.
- (g) Rules Committee Reviews, Recommendations and Approvals. Attachment: Memorandum from City Attorney Richard Doyle, dated February 13, 2004, responding to Proposition 209 - City Charter - Project Diversity Screening Committee.
  - (1) City Attorney's response to Council Member Cortese's request to expand the role of Project Diversity Screening Committee and request for Proposition 209 history  
The Committee directed the City Manager to return to Rules Committee on March 17, 2004 with both a written report and a short oral presentation on the following:
    - (a) Current selection process for all appointments under his purview, using the recent searches for the Police Chief and Fire Chief positions as case studies;
    - (b) Examples of practices employed by other jurisdictions; and
    - (c) An analysis of the potential value of establishing a standing citizen-based task force to perform post-selection evaluations on appointees.
- (h) Oral communications - None were presented.
- (i) Adjournment - The meeting was adjourned at 2:35 p.m.

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried unanimously, the Rules Committee Report, and the actions of February 25, 2004, were accepted. Vote: 9-0-2-0. Absent: Dando, Williams.

**3.4 Direct the City Attorney to draft an implementing ordinance for Measure D.  
(Mayor/Reed)  
(Rules Committee referral 3/3/04)**

Documents Filed: Memorandum from Mayor Gonzales, and Council Member Reed, dated March 4, 2004, recommending approval to direct City Attorney to draft an implementing ordinance for Measure D.

Discussion/Action: Council Member Campos suggested that Staff consult with representatives from the construction industry in order to help with this policy, and asked if there is a committee that will be formed. City Manager Del Borgsdorf replied the City Attorney's and the City Manager's office has formed a committee to work jointly taking input. Council Member Campos requested the committee speak with three entities, including the American Institute of Architects (AIA), in order to balance the architectural concerns of the City's expectations of the process, the Building Trades Council to ensure that design-build entities are limited to value, engineering materials, designs, workers wages, and to provide input on how to obtain the best value of quality. She added the lowest bid is not always best value, and it would be helpful for Staff to look at those issues, and to also obtain input from representatives of the General Contractors and Subcontractors the City has conducted business with.

Council Member Reed moved approval of the memorandum, dated March 4, 2004, that Mayor Gonzales and he co-authored, including Council Member Campos' outreach with the three entities. Council Member Chavez seconded the motion. Council Member Chavez requested that Staff ensure the League of Women Voters is incorporated, and that Staff also ensure the benchmarks are efficient, cost effective, and incorporate unique specialty projects such as the Airport People Mover (APM). Deputy City Manager Ed Shikada replied the opportunities for design-build to be a cost effective approach are as relevant to specialized procurements as they are to general construction projects, and Staff will definitely be looking to those opportunities. Council Member Chavez remarked as Staff works with the committee, there are cities and municipalities across the nation that have used this as a very effective tool in order to build projects quickly, and in very cost effective manners, and Staff should look at the municipalities which are held up as the model to check the City's process against their process. Deputy City Manager Shikada replied there is a network of the 10 largest cities in California that have established a CIP benchmarking network, and Staff has already established contacts with those cities that use design-build to get a sense of their administrative processes and lessons learned.

Council Member Gregory requested Staff ensure, as this ordinance comes back, that not only does it clearly articulate the selection criteria for the contractor, that it also clearly defines the criteria that is being used for choosing design-build over other strategies. Council Member Chirco stated as Staff looks at design-build, asked how can Staff assure the public, the City is clear with the community as to what the costs of the project will be before it is committed to. City Manager Borgsdorf replied that will be a product of the work Staff will accomplish in response to this directive from Council, adding Staff will include issues of cost and quality, and bring back that criteria before moving forward with the process.



### 3.4 (Cont'd.)

Mayor Gonzales called for public testimony. Bobbie Fischler, League of Women Voters spoke on the issue. On a call for the question, the motion carried unanimously, the City Attorney was authorized to draft an implementation ordinance for Council consideration to implement the voters will as expressed in the passage of the Charter Amendment known as Measure D, including: (1) Include provisions for competitive selection per Council direction in December 2003 when the matter was placed before voters. Those provisions shall reflect our current standards and practices for open and competitive selection for professional services, including: (a) Requests for Proposals shall be approved by the Mayor and City Council. (b) Criteria for contractor selection shall be approved by the Mayor and City Council. (c) Scores of the competitors against the criteria shall be made public. (d) The selection of a contractor to negotiate with shall be approved by the Mayor and City Council. (e) The award of a contract shall be approved by the Mayor and City Council. (2) Ensure that the implementation of the Design-Build Procurement Process complies with all City and State labor laws and provisions. (3) The Staff group formed by the City Attorney's and the City Manager's Office shall incorporate input obtained from the American Institute of Architects (AIA), the Building Trades Council, and representatives from the General Contractors and Subcontractors. (4) Return with criteria including cost and quality issues, selection process for the Contractor, and criteria used for choosing design-build over other strategies. Vote: 9-0-2-0. Absent: Dando, Williams.

### 3.5 Approval of:

- (a) **Recognize all marriages of our City employees certified by other jurisdictions.**
- (b) **Direction to staff to make any necessary changes to our benefits policies to ensure that all marriages of our City employees certified by other jurisdictions are treated equally and fairly.**

(Mayor/Yeager)

(Rules Committee referral 3/3/04)

Documents Filed: (1) Memorandum from Mayor Gonzales, and Council Member Yeager, dated March 4, 2004, recommending approval to recognize all marriages of City employees certified by other jurisdictions, and approval of direction to Staff to make any necessary changes to our benefits policies to ensure that all marriages of our City employees certified by other jurisdictions are treated equally and fairly. (2) Memorandum from Vice Mayor Dando, Council Member Reed, and Council Member Williams, dated March 5, 2004, recommending approval to direct Staff to follow California law in recognizing marriages of City employees and to identify and return to the Council with a report of areas in which domestic partnerships and marriages are treated differently by the City of San José, and with recommendations for changes to achieve equal treatment, within the limits of California Law. (3) Memorandum from Council Member Cortese, dated March 9, 2004, stating his position on the subject. (4) Memorandum from City Attorney Richard Doyle, dated March 5, 2004, addressing issues related to City employee benefits, including retirement benefits for spouses of same sex marriages, and domestic partners. (5) One thousand, three hundred, thirty-two letters from the public.

### 3.5 (Cont'd.)

Discussion/Action: Mayor Gonzales called for public testimony. Speaking in favor of the issue were Joe Pambianco, Rod Stone, Manuel Ruiz, Mary Parker-Eves, Bill Elicson, John Bowerman, Howard Wai, Don Burrus, David Carranza, Paul Wysocki, John Haselden, Reverend Art Mills, Stone Church of Willow Glen, Fran Bennett, Mark Perry, Donna Wallach, Darlene Wallach, Jim Weston, Robert Schoof, Gary Wood, Susan Price-Jang, Tom Smith, Bill Halleck, Arlene Rusché, Charley Kearns, Philip Bump, Deborah Powell, South Bay AFL-CIO Labor Council, Jim Delahunt, Nikki Weidner, Marriage Equality California, Harry Miller, Tina Salas, Leslee Hamilton, Ellen O'Brien, William O'Connell, Jean Kaelin, Peggy Biyan, Rick Crosetti, Sandy Perry, Wiggys Siverstone, Debra Dake, BAYMEC, Fil Maresca, Clark Williams, Caroline Williams, Ellen Turner, Jo-Lynn Otto, David Mohr, Tim Flynn, Patrick Soricone, Billy DeFrank Community Center, Mark Gillard, OutNow Magazine, Reverend Lilia Cuervo, Reverend Amy Beth Durward, Timothy Flaherty, Reverend Geoff Aimositis, Reverend Fran Dew, Elaine Rhodes, Don Cecil, Ted Johnson, Helen Johnson, Christopher Queen, Pat Koopman, Evan Low, Kim Singh, Jane Christol, Tom Cook, Devin Sodt, and Chris Blok.

Speaking in opposition of the issue were Seth-Christopher Stancliff, J. Griffin, Michael Morris, Jerry Shaffer, Charles Williamson, Ron Ruiz, Craig Sturges, Dr. Daniel Milk, Family-Community Church, Mike Kiley, Randall Wing, Roneta Dickey, Bill Hughes, Jerlyn Hollars, Ross Signorino, Neil Mammen, Scott Yokim, Mike McClure, James Delor, Rob Ellwood, Reverend Arthur Lum, Chinese Church of Christ, Don Jones, David Sawkins, Marvin Griffing, Larry Shoemaker, Richard Lopes, Gary Molle, Mike Millen, Chris Wise, Joseph Cossell, Dan Laguna, Doyle Mitchell, Robert Sternat, Dan Hoffman, Larry Pegram, Thomas Walker, Steven Loomis, Jo Loomis, Cole Buxbaum, Pastor Bill Buchholz, Stephen McDonnell, Corinne Trader, Fred Vela, Brad Dacus, Chuck Nakata, Douglas Lamb, Pastor Paul Bates, Prayer Garder Church, Diane Hopkins, Donald Goossens, Ken St. Martin, John Rose, Daniel Beasworrick, Peter Commandeur, Dr. Jim Cooper, First Church of the Nazarene, Robbie Thomson, Christine Rzepka, The Ripple Effect, and Kevin Smith.

Mayor Gonzales thanked all the speakers who spoke on this very important issue. Council Member Yeager moved approval of the memorandum dated March 4, 2004, that Mayor Gonzales and he coauthored. Council Member Chavez seconded the motion.

Mayor Gonzales referring to the data in today's newspaper article on this subject, and to the public comments this evening, asked for an explanation as to the cost of the benefits, and the number of affected employees. Director Employee Services Mark Danaj replied the City currently provides domestic partner benefits to 274 employees, and 49 are for same sex partners. He added in regard to the dollar amounts that were noted in the newspaper, they were in reference to the expense associated with retirement, and that picture is not entirely clear to the City yet. He stated in regard to the issue of the provision of health, life, and dental benefits, the cost is essentially insignificant, commenting the City has been providing domestic partner benefits since 1998, with no significant impact on the City's premiums.

### 3.5 (Cont'd.)

Mayor Gonzales remarked it has been mentioned a number of times today that by passing this motion, the City of San José will be breaking the law, and asked for the City Attorney to speak on that topic. City Attorney Richard Doyle replied the issue before Council is a motion where the City is not passing on or making a decision on the validity or legality of same sex marriages. He stated that issue has been well reported in the press, and the California Courts will have final say on that, and what this Council decides does not impact or influence that court decision. He added under California Law as a Municipal employer of a number of employees, the City has the ability to provide benefits to the employees, and determine who receives benefits and under what circumstances, and as such, can determine whether or not to recognize same sex marriage certificates issued by other jurisdictions.

Council Member Yeager remarked it is his understanding that if this motion passes, two important points are, it is not illegal, and it is a minimal cost to the City of San José. He stated the public has said Council Members are here to uphold the law, and in a section of the Constitution and the Bill of Rights it states, "This Constitution shall be the supreme law of the land. That there is no law that is above the U.S. Constitution". He added in Article 14 of the Constitution it states, "That no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty or property, without due process of law nor deny to any person within its jurisdiction, the equal protection of the laws". He commented that is the most important, and expressed pride on the collaboration with Mayor Gonzales on this issue. He remarked about four weeks ago City Attorney Doyle mentioned an employee had come forward after getting married in San Francisco, asking to be recognized by the Employee Services department. He stated the City Attorney looked into the matter, and the issue was reviewed in Closed Session. Council Member Yeager expressed appreciation for everyone who came forward today to speak. He remarked the only way to change the minds of people who do not believe in this issue, is when a loved one or someone close to them confides that they are gay, perhaps then it will be understood the type of love that people have, and it is important society recognizes that love. He stated this is the right path; San José has a long history of nondiscrimination, and urged his colleagues to support the motion.

Council Member Cortese expressed support for the motion, noting Council Member Yeager captured every reason to support this issue. He clarified that Council is not here just to uphold the law, but is a Legislative body, and the system of checks and balances in this government states that the City does not show legislative deference to the judicial branch. He added the City has to take necessary actions legislatively to make it fair and equitable for its employees, and expressed appreciation for all of the comments.

### 3.5 (Cont'd.)

Council Member Reed expressed opposition to the motion, commenting he has been married to the same woman for 33 years, and values his wife and children more than life itself. He stated after spending many years studying the bible, he does not think same sex marriage is a threat to his marriage, and does agree that there should be equal treatment for the employees domestic partners, however the State law should be followed. He remarked the courts, the legislature, and the voters make State law, and as an elected official, there is an obligation to follow that course. He added it is clear that the marriage certificates issued by San Francisco to gay and lesbian couples are not valid under California law. He remarked an elected official is not allowed to decide if the law is constitutional or not, that is a role reserved for the courts, and until the courts, the legislature or the voters change the law, he will not support the issue. Council Member Reed moved to table the motion. The motion failed with no second.

Council Member Chirco remarked this is an issue of equality and fairness, and providing equal access for all of San José's employees. She stated belief in equity and fairness, and expressed support of the motion. Council Member Campos remarked she is proud of Council Member Yeager's stance, as civil rights is not an easy issue. She commented she believes in fighting for other civil rights issues, such as workers to have good conditions in which to work, live, and obtain decent wages. She remarked this is an issue to ensure the rights for the domestic partners, their families, and to be able to have the same benefits as the other employees. She expressed support for the motion, as this issue is about equity, ensuring that people who live and work in the City of San José have the same rights as everyone else.

Council Member LeZotte expressed support for the motion, as this issue is about civil liberties, equal rights and access, and the Council as policy makers have an absolute obligation to ensure that the policies supported and put forward are not discriminatory in any manner. She expressed appreciation for all the speakers who came forward today. Council Member Gregory stated this is a tough issue, and appreciated all the comments articulated today, both on the religious side, as well as the community activists and the gay and lesbian community. He stated the Council is here to ensure the rights for the City's employees, and this is a policy decision that deals with what level of benefits the City will offer its employees in order to be fair, and to have equal access to benefits. He expressed support for the motion, as it is the right thing to do.

Council Member Chavez expressed appreciation for all the comments. She stated that Council Member Reed's memorandum points out a comment by the Attorney General that states, "...the State of California has defined marriage as a union between a man and a woman. The law is clear. Individuals and government entities that object to statutes may work to change them through the legislative or initiative process". She stated Council is a legislative body, and if San José wants to be the center of innovation and technology, it should create an environment for people to feel safe, and welcome. She remarked San José is one of the safest and diverse cities, and this debate should continue, and as an employer representing the City of San José, this is an opportunity to treat people with fairness, and dignity. She commented it would be wrong not to speak up on discrimination, even while the courts debate this, and expressed support for the motion.

### **3.5 (Cont'd.)**

Mayor Gonzales remarked that he is proud to serve with his colleagues on the Council, and everyone's conduct has been stellar. He commented he has been blessed and proud to be a public servant for over 20 years, attempting to find ways to improve the lives of others, whether it is building affordable housing, "Getting Families Back to Work" in San José, or focusing on the quality of life. He remarked he is dedicated every day to the effort of arriving at the greatest job and City in America, and working to improve the lives for the people of San José. He commented this is the right measure for the employees of San José who hold in their hand, a marriage license, and there has not been a court yet who has stated that is an illegal document, and if a court later on states it is illegal, then this program will be changed. He remarked as long as the document is legal, the City of San José does not have legal standing to refuse that employee the same equal rights, protection, and the same right to improve the lives of their family members. He expressed support for the motion.

On a call for the question, the motion carried, and the memorandum from Mayor Gonzales, and Council Member Yeager, dated March 4, 2004, recognizing all marriages of City employees certified by other jurisdictions was approved, with direction to Staff to make any necessary changes to the benefits policies to ensure that all marriages of the City employees certified by other jurisdictions are treated equally and fairly. Vote: 8-1-2-0. Noes: Reed. Absent: Dando, Williams.

The City Council recessed at 5:41 p.m., and reconvened at 5:48 p.m.

## **ECONOMIC & NEIGHBORHOOD DEVELOPMENT**

### **4.2 Report of the Driving a Strong Economy Committee – February 23, 2004 Council Member Williams, Chair**

Documents Filed: The Driving a Strong Economy Committee Report, dated February 23, 2004.

- (a) Report on the Workforce Investment Network. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated February 23, 2004, transmitting the Silicon Valley Work Force Investment Network report.

The Committee accepted the Staff Report.

- (b) Oral communications - There were none.
- (c) Adjournment - The meeting was adjourned at 3:24 p.m.

Discussion/Action: Upon motion by Council Member Gregory, seconded by Council Member Chavez, and carried unanimously, the Driving a Strong Economy Committee Report, and the actions of February 23, 2004, were accepted. Vote: 9-0-2-0. Absent: Dando, Williams.

- 4.3**
- (a) Approval of an Expansion Agreement with San José Arena Management LLP, regarding the construction and financing of the second expansion to the Ice Centre of San José (Logitech Ice).**
  - (b) Approval of the Amended and Restated Lease and Management Agreement with San Jose Arena Management LLP for the operations and management of the Ice Centre of San José (Logitech Ice).**
- (Economic Development)**

Documents Filed: None.

Discussion/Action: Item 4.3 was deferred to March 23, 2004.

**4.4 Adoption of a resolution:**

- (a) Determining that public use and necessity require the acquisition of a portion of the property located at 888 Story Road, owned by Dennis K. Nazloo and Tony A. Gevergiz.**
- (b) Finding that:**
  - (1) The property to be taken is necessary for the completion of the Story Road Widening Project (Senter Road to McLaughlin Avenue);**
  - (2) The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;**
  - (3) City staff established an amount of just compensation not less than the approved appraisal of the fair market value;**
  - (4) City staff presented an offer to the owners for the full appraised amount; and**
  - (5) The proposed taking and use are authorized by law.**
- (c) Directing the City Attorney to file an eminent domain action to acquire the above property interests.**

**CEQA: Exempt, PP02-11-333. Council District 7. (Public Works)**

Documents Filed: None.

Discussion/Action: Item 4.4 was dropped.

- 4.5 Acceptance of the workplan for implementation of City Council direction to pursue savings in the procurement of technology, furniture, equipment, and relocation services for the New Civic Center. CEQA: New Civic Center project: Resolution No. 68905; CEQA: New Civic Center Parking Garage: Resolution No. 71743. (City Manager's Office/Public Works/Information Technology/Finance/General Services) (Council referral 2/3/04 – Item 4.3)**

Documents Filed: (1) Memorandum from Deputy City Manager Ed Shikada, Director of Public Works Katy Allen, Chief Information Officer Wandzia Grycz, Director of Finance Scott Johnson, and Director of General Services Jose Obregon, dated March 2, 2004, recommending acceptance of a workplan for procurement and implementation of the said City Council direction. (2) Supplemental memorandum from Deputy City Manager Ed Shikada, dated March 8, 2004, providing corrections to line items on Attachment A.

#### 4.5 (Cont'd.)

Discussion/Action: Council Member Chavez asked in regard to Attachment A, Radio/Cellular/WiFi, and Security Hardware and Software, it states, "In order to streamline the procurement and realize saving from reduced mobilization and coordination, installation of security measures will be procured with related building construction contract", asked for an explanation of what that text meant. City Manager Del Borgsdorf replied there are a number of installations of furniture, technology and equipment that tie directly to where Staff is in the course of the construction of the building, and some of that work will be accomplished by change orders or a separate bid in order for the installation to take place at the right point in time during the construction. Council Member Chavez commented in regard to the Public Use Space Program there is a discussion about defraying costs to rent, versus to buy, and asked what is the money for. Deputy City Manager Shikata replied in terms of the analysis to be conducted, this is the cost benefits analysis that will include all of the options as described, and also looks at existing equipment for furniture.

Council Member LeZotte referring to Page 2, 4th bullet, "When individual contract award recommendations are forwarded to the City Council (or prior to this where feasible), asked Staff for clarification. Deputy City Manager Shikata replied on Page 3 it actually outlines the particular analysis that will be presented in advance of the award recommendations. Council Member LeZotte referring to Attachment A, Facility Information System remarked it states that Staff is looking at specifications and vendor cost proposals that will be evaluated against the option of continued use of Microsoft Outlook, and asked if Staff is looking at using other types of software. Chief Information Officer Wandzia Grycz replied the recommendation is that Staff look at other specifications in order that General Services will be able to manage the entire facility, including all the conference rooms that will be available for internal and community use. She stated that type of a system includes specifications that would entail how the meeting rooms are scheduled, what type of equipment, set-up, and staffing resources. Council Member LeZotte asked if that is internal to the General Services Agency, and will the rest of the City Staff be trained. Chief Information Officer Grycz replied the expectation is should the City decide to complete contract negotiations for the procurement of this type of a system, the training will be included in the contract. Council Member LeZotte remarked that does not account for the cost associated with training staff on the new system as far as lost productivity in order to learn to use the new system. Chief Information Officer replied perhaps another alternative could be offered as Staff looks at the proposals in terms of costs, and weigh that against the City's current resources needed in order to use the existing tools.

Council Member LeZotte referring to the Recycling/Trash Compactors, remarked it states, "...installation of trash compactors will be procured with related building construction contract", and expressed concern that Staff is looking at recycling/trash compactors as an add-on, whereas there are efficiencies to be built into the building to make recycling easy to accomplish, and asked for an explanation. Director of General Services Jose Obregon replied Staff has every intention of carrying over the recycling program into the new facility, but also expanding and enhancing the program. He stated

#### **4.5 (Cont'd.)**

the compactors that are associated with this particular program are better compactors. Council Member LeZotte commented this is a Green building and the recycling is part of the superstructure and is not an “add on”. Director Obregon replied there would be a full recycling program at the facility. Council Member LeZotte remarked when Staff starts looking at the signage for public way finding and utilities services, suggested that Staff look at using recycled products.

Council Member Gregory referring to Page 3 of the original Staff memorandum, which articulates the sequence of contract awards being presented to Council in June, asked for an explanation. Chief Information Officer Grycz replied with regard to radio, cellular and WiFi that is required to be highly coordinated with the construction. She stated as the construction progresses with the ceiling, it is to the City’s advantage to already have that plumbed in where each one of those items will reside, and install that technology. Council Member Gregory asked in regard to the audiovisual equipment installation. Public Outreach Manager Tom Manheim replied this equipment should be installed before the walls are closed up, especially the video system that is used throughout the entire building. He stated there is a lead-time for purchasing the equipment, and it is assembled offsite to verify all the parts work, taken apart and reassembled again on site. Council Member Chavez moved approved of the Staff recommendation with her colleagues’ comments. Council Member Gregory seconded the motion.

On a call for the question, the motion carried unanimously, and the Staff workplan for procurement and implementation of the City Council direction to pursue savings in the procurement of technology, furniture, equipment, and relocation services for the New Civic Center, was accepted. Vote: 9-0-2-0. Absent: Dando, Williams.

#### **JOINT COUNCIL/REDEVELOPMENT AGENCY**

The Redevelopment Agency Board convened at 6:05 p.m. to consider Items 10.1 and 10.2 in a Joint Session.

- 10.2 (a) Acceptance of the status report on Getting Families Back to Work efforts, and acceptance of the “One List” as a tracking method for progress of the City’s work related to Getting Families Back to Work directives and the Economic Development Strategy.**
- (b) Acceptance of the estimates of the financial impact of the Getting Families Back to Work directives.**
- (City Manager’s Office)**  
**(Council referral 12/16/03 – Item 4.4)**



## 10.2 (Cont'd.)

Documents Filed: (1) Memorandum from City Manager Del Borgsdorf, dated March 2, 2004, recommending acceptance of the status report on “Getting Families Back to Work” efforts, and “One List” tracking method, and estimates of the financial impact. (2) Supplemental memorandum from City Manager Del Borgsdorf, dated March 3, 2004, transmitting the “One List” pertaining to the top four initiatives. (3) Executive Summary for “Getting Families Back to Work”, dated March 9, 2004.

Discussion/Action: City Manager Del Borgsdorf introduced Director of Economic Development Paul Krutko. Director Krutko, and Director Employee Services Mark Danaj gave a slide presentation overview of the “One Start Center”, including a video presentation.

Council Member Chavez remarked it would be helpful to have the completion dates on the Integrated “One List” Tracking System. She stated in moving forward in the process, it would also be helpful for Staff to identify the responsibility to the private sector partners, for example, when the City receives complaints regarding speed and accuracy from companies such as PG&E, San José Water Company, and Comcast Corporation in regard to access into buildings. She stated her general observation is the directive on Attachment A, Item 3.2 which speaks to the sports teams, and San José State, as this begins to become clearer, Staff may want to redefine the goal, which will help Council, and be supportive of the general direction in order to check in on those projects. Director Krutko replied the intent of the status report is to be used a tool to populate with projects as Staff works on them, adding and changing information. Council Member Chavez referring to the Downtown theatre, the First Christian Church, and new facility that may have a venue such as a jazz club, asked what would be the trajectory for them to be put on Staff’s list. Director Krutko replied for an example, as it became a project, Staff would incorporate it into this list, identify who would be responsible for it, identify the team members, and layout project milestones.

Council Member Reed commented the “One Voice” program is great, but expressed concern about what does the City say when it speaks with “one voice”. Council Member Reed referring to Attachment B, Strategic Initiative #5, Support Start-Up and Growth of Local Businesses, Small and Large, in Tech as well as Non-Tech Fields, and focus on the changes that need to be made in the Zoning Code regulations, and to that extent, how is Staff resolving those issues, especially in the Industrial area. Director of Planning, Building and Code Enforcement Stephen Haase replied that recommendations would be coming forward to amend the Zoning Code to provide more flexibility in the Industrial Park Zone.

## 10.2 (Cont'd.)

Mayor Gonzales called for public testimony. Alex Marthews, Preservation Action Council of San José spoke on the issue. Mr. Marthews expressed concern in regard to the historic review process, and asked for clarification on that issue. He asked specifically whether historical review processes are included under the heading of Regulations Burdensome to Business that “Getting Families Back to Work” proposals aims to streamline. He commented proper review of proposals affecting historical properties allows development proposals to clear that hurdle early on, and also in the opinion of the State of California, threaten San José’s hard won certified local government status, which is the status that allows San José to review projects locally and efficiently. He added he would like to find out whether the historical review process is included in that list.

Mayor Gonzales requested that Staff respond to Mr. Marthews. Director Haase replied Staff brought an item forward to Council a few months ago that had support of the Historic Landmarks Commission and provided additional flexibility in the permitting process, and would follow up with Mr. Marthews. Upon motion by Council Member Chavez, seconded by Council Member Gregory, and carried unanimously, the Status Report on “Getting Families Back to Work” efforts and the “One List” as a tracking method for progress of the City’s work, and the estimates of the financial impact, were accepted. Vote: 9-0-2-0. Absent: Dando, Williams.

## 10.1 **Acceptance of the quarterly report on the Citywide Capital Improvement Program (CIP), including park, library, public safety bond projects, and Strong Neighborhoods Initiative (SNI) Projects. CEQA: Not a Project. (City Manager’s Office/Redevelopment Agency)**

Documents Filed: Quarterly Status Report on the Citywide Capital Improvement Program, including Park, Library, Public Safety Bond and Strong Neighborhoods Initiative Projects, dated March 9, 2004.

Discussion/Action: Deputy City Manager Terry Roberts gave a slide presentation on the Citywide Capital Improvement Program (CIP), and the Strong Neighborhoods Initiative (SNI) Projects.

Council Member Gregory asked what is the criteria timeline for the projects in the deferral window. Director Roberts replied Staff is currently developing that, and will have a proposal coming forward in the upcoming Budget Presentations. Council Member Gregory referring to Page 18, Figure 1-6, stated it does not list the SNI projects with potential operation and maintenance cost impacts on the General Fund, and Director Roberts replied that will be presented in the budget proposals. Council Member Gregory referring to Page 26, Coyote Creek Trail, suggested that Staff mention the fact that on the reach between Coyote, Los Lagos Golf Course and Kelley Park, there is county owned property which may have impacts on scheduling.

## **10.1 (Cont'd.)**

Council Member LeZotte requested that Staff correct the Quarterly Status Report, Page 54, Item 27, to reflect the Gregory Street Bridge is not in District 1, it is in District 6; and on Page 61, Item 109, Traffic Signals - LRT Retiming, added that District 1 does not have a lightrail. Council Member Campos requested that Staff forward the project construction schedule, including the Mayfair Community Center. Upon motion by Council Member Campos, seconded by Council Member Chavez, the Status Reports on the Citywide Capital Improvement Program, and the Strong Neighborhoods Initiative Projects, were accepted. Vote: 9-0-2-0. Absent: Dando, Williams.

The Redevelopment Agency Board portion of the Meeting was adjourned at 6:55 p.m.

## **NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS**

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

None.

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

None.

## **OPEN FORUM**

(1) Daniel McCall spoke on societal issues.

## **ADJOURNMENT**

The Council of the City of San José was adjourned in memory of Clair Normandin, long-time San José business owner; and in memory of Barbara Jensen, mother of Peter Jensen, employee in the City Manager's Office.

The Council of the City of San José was adjourned at 6:58 p.m.

**RON GONZALES, MAYOR**

**ATTEST:**

**DEANNA J. SANTANA, ACTING CITY CLERK**

smd/03/09/04min